IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

WP(C).No. 4517 of 2007(K)

PETITIONER:

O.A.FRANCIS, OLAKKENKIL HOUSE,
KOZHAKKEKOTTA, THRISSUR.

BY ADV. SRI.C.ANIL KUMAR
SMT.A.K.PREETHA

RESPONDENTS:
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1. CORPORATION OF THRISSUR,
REPRESENTED BY ITS SECRETARY, P.O.THRISSUR.

2. JALAJA, W/O PADMAJAN,
KOTTAKKAL HOUSE, P.O.KUTTUR,
THRISSUR.

BY ADV. SRI.K.P.VIJAYAN
SRI.V.M.SYAM KUMAR
SMT.C.B.SUMA DEVI
SMT.KRIPA ELIZABETH MATHEWS
SRI.G.SREEKUMAR (CHELUR)
SRI.K.B.MOHANDAS. SC, TCR CORP.
SRI.LELLULAL T.G.THUNDATHIL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/06/2007 ALONG WITH W.P.C.NO.16763/07 & CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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W.P.(C).NOs.4517, 16763,
16928 & 19058 OF 2007

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Dated this the 27th day of June, 2007

JUDGMENT

Writ petitions being connected are disposed of through this common judgment.

Petitioner in W.P.(C)NOs.4517/07 & 16928/07 is one and the same (hereinafter referred to as O.A.Francis). Petitioner in W.P.(C)No.19058/07 is the first petitioner in W.P.(C) No.16763/07. She is one Jalaja.

Mr.Francis filed W.P.(C)Nos. 4517/07 & 16928/07 on the following brief allegations:

O.A. Francis was conducting a hotel in a building at Kizhakkekotta since 1972. The building was acquired by the first respondent in the year 1976. It was assured that the tenants of the said building will be accommodated in the newly constructed building. Ext.P3 was passed allotting a room to the petitioner. The allegation in W.P.(C)No.4517/07 is that steps are under way to allot the room to the second respondent namely Smt. Jalaja

overlooking the petitioner's rights. The prayer in the W.P.(C)No.4517/07 is to direct the first respondent to allot room to the petitioner in terms of Ext.P3 and to declare that he is eligible for allotment to a room in the newly constructed building in terms of Exts.P1 and P3.

2. In W.P.(C)No.16928/07, Shri.Francis seeks to quash Ext.P9 to the extent it pertains to him and to declare that he is eligible for allotment to a room in the newly constructed building in terms of Ext.P1 and P3. Ext.P1 is the resolution of Muncipal Council dated 12-1-1973 assuring allotment of room to him. Ext.P2 is the order of the first respondent allotting a temporary shed to the petitioner. Ext.P3 is the resolution passed by the first respondent allotting Room No.4 to the petitioner. It is the common case that when the matter was challenged by Smt.Jalaja and it was remitted back. Upon it being remitted back, it is decided in favour of Smt.Jalaja vide Ext.P9 in W.P.(C) No.16928/07. According to Shri.Francis he was conducting business by himself and that in term of Ext.P1 resolution he was the beneficiary in Ext.P2 and he was allotted a temporary shed.

It is submitted by the counsel for the petitioner that Jalaja was not conducting business herself. Her predecessor was doing the business and he was the actual tenant. Smt. Preeta would contend that the decision to allot room to Jalaja instead of O.A.Francis is unsustainable.

3. On the other hand, counsel for the Corporation submits that the understanding was to allot room to those tenants who co-operate. Sri.O.A.Francis, without there being an actual hike in the licence fee, approached the civil court and instituted O.S.No.131/98 and obtained an injunction order and the suit was ultimately terminated in the year 200, it is stated. It is also submitted that even for the period Francis was in occupation he has not paid any licence fee so far. There is only one room for allotment between Shri.Francis and Smt.Jalaja.

4. I am not much impressed by the contentions of Smt.Preeta that the petitioner being an actual tenant who was conducting business should be preferred to Smt.Jalaja who claims under her predecessor who was the actual tenant. That apart the conduct of Shri.Francis in approaching the civil court and getting

an order of injunction is not a matter which I cannot over look particularly under Article 226. Smt.Preeta submits that Smt.Jalaja comes under the award of 1976 whereas Shri.Francis comes under the award of 1980 and in terms of time also, it is the claim of Smt.Jalaja which should be preferred. I feel that the allotment in favour of Smt.Jalaja is not liable to be interfered with.

5. It is submitted by the learned counsel for the petitioner that in Ext.P9 it is stated that the claim of Shri.Francis will be considered if he withdraws the case and also remits the entire licence fee. Learned counsel for the petitioner submits that petitioner had a bitter experience in the past when on a similar situation such assurance was observed in breach. Counsel for the Corporation submits that it is not exactly an assurance as such. He submits that if the petitioner remits the entire amount as licence fee, his claim will be considered when new building is put up. I record this submission.

6. As far as W.P.(C)No,19058/07 is concerned, it is filed by Smt.Jalaja . She challenges Ext.P1. Smt.Jalaja seeks a

direction to set aside that part of the decision to divide room No.3 in Ext.P1 since it contravenes Ext.P1 (counsel submits that it is Ext.P2). Learned counsel for the petitioner relies on Ext.P2 sketch and points out that by the decision to bifurcate in Ext.P1, the running of the restaurant which the petitioner proposes to run will not be feasible, it is submitted.

7. Learned counsel for the Corporation would submit that Ext.P1 came to be passed pursuant to the earlier direction of this court and that perusal of Ext.P1 would show that in the course of hearing it is agreed by the petitioner that petitioner will be allotted room with bifurcation. Learned counsel for the petitioner submits that the bifurcation presently done does not adversely affect the petitioner. Petitioner has also preferred Ext.P4 seeking some benefit. W.P.(C)No.19058/07 is disposed of directing the first respondent to consider and take a decision on Ext.P4 in accordance with law within a period of two months from the date of receipt of a copy of this judgment.

8. W.P.(C)No.16763/07 is filed by Smt.Jalaja and another licensee feeling aggrieved by the decision to impose licence fee at

the rate of Rs.25/- per sq.ft. Petitioners have preferred Exts.P5 and P6.

9. I heard learned standing counsel for the Corporation also.

Learned counsel submits that pending decision, petitioners will make payment under protest. W.P.(C)No.16763/07 is disposed of directing the first respondent to consider and take a decision on Exts.P5 and P6 in accordance with law within a period of two months from the date of receipt of a copy of this judgment.

(K.M.JOSEPH, JUDGE)

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